UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,453	06/25/2003	Jason Cohen	MSFT 5062 (302665.1)	3271

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SENNIGER POWERS
ONE METROPOLITAN SQUARE
16TH FLOOR
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EXAMINER
COULTER, KENNETH R

ART UNIT	PAPER NUMBER
2141	

NOTIFICATION DATE	DELIVERY MODE
10/11/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspatents@senniger.com

□□

	Application No.	Applicant(s)
Office Action Summary	10/603,453	COHEN ET AL.
	Examiner	Art Unit	
	Kenneth R. Coulter	2141	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
   closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-70* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-70* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *09 July 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage

        application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date *See Continuation Sheet*.

4) ☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :7/9/03; 12/1/04; 12/9/04; 3/25/05; 4/19/05; 7/5/05; 12/2/05; 1/4/06; 8/17/06; 2/2/07.

DETAILED ACTION

Specification

1.   The disclosure is objected to because of the following informalities:

The term "ApPLICATIONS" (p. 1, line 3 of the specification) should be all

capitalized;

The cross-referenced application data (p. 1, lines 4 – 10; p. 11, last line; and p.

12, line 3 of the specification) should be updated (10/172,953, now U.S. Pat. No.

6,947,954; 10/173,297, now U.S. Pat. No. 7,017,144) ;

Extraneous underlining (p. 28, line 1).

Appropriate correction is required.

Claim Rejections - 35 USC § 101

2.   35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3.   Claims 69 and 70 are rejected under 35 U.S.C. 101 because the claimed

invention is directed to non-statutory subject matter.

Independent claims 69 and 70 are directed to software (instructions) that is not

implemented on a computer-readable storage medium.

Data structures not claimed as embodied in computer-readable media are descriptive material *per se* and are not statutory because they are not capable of causing functional change in the computer. See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention which permit the data structure's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory.

Claim Rejections - 35 USC § 112

4.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5.   Claims 2, 18, 33 – 37, 38, 39, 41, 49, 56 – 64, 66, and 69 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "single combined image stream" is vague and indefinite, when considering that the common data from the first image and the second image are simultaneously transmitted to the first and second destination devices.

Claim Rejections - 35 USC § 102

6.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7.   Claims 1 – 70 are rejected under 35 U.S.C. 102(e) as being anticipated by Diwan

(U.S. Pat. No. 6,801,936) (Systems and Methods for Generating Customized Bundles of

Information).

7.1   Regarding claim 1, Diwan discloses a system for transmitting a first image (col. 1,

lines 14 – 19 "*The types of information provided over these networks ... include*

***streaming** audio, **video**, ..., **and other multimedia information**.*") including a first

software and for transmitting a second image including a second software, wherein the

first and second images include common file data, wherein the first image includes first

file data and wherein the second image includes second file data which is different from

the first file data (col. 4, lines 28 – 35 "*the present invention is not limited to any specific*

combination of hardware circuitry and software"), said system comprising:

a server (Fig. 1, items 145, 150, 155; col. 3, lines 15 – 22 "The information

providers 145 – 155 may include **servers**, personal computers, ... that supply

information to whomever wants it and/or subscribes to the service.");

a first destination device (Fig. 1, items 105, 110, 115, 125 "subscribers"; col. 2,

line 66 – col. 3, line 14 "subscriber");

a second destination device (Fig. 1, items 105, 110, 115, 125; col. 2, line 66 –

col. 3, line 14);

a shared network linking the server to the first and second destination devices

(Fig. 1; col. 2, lines 55 – 65);

wherein the server is adapted to simultaneously transmit the common data to the

first and second destination devices via the shared network (col. 2, lines 8 – 15

"generating a multicast message containing the common information; and transmitting

the multicast message to the group of subscribers."); and

wherein the server is adapted to transmit the first file data to the first destination

device via the shared network and the second file data to the second destination device

via the shared network (Fig. 1; col. 2, lines 8 – 15, 55 – 65).

7.2   Per claim 2, Diwan teaches the system of claim 1 further comprising: said server

transmitting the first image including the first software and the second image including

the second software in a single combined image stream from which the first image

and/or the second image can each be re-created by imaging (Fig. 5, item 540; col. 5,

line 62 – col. 6, line 5; col. 6, lines 16 – 25).

7.3   Regarding claim 3, Diwan discloses the system of claim 1:

wherein the server is adapted to transmit first descriptive data to the first

destination device via the shared network, said first descriptive data identifying the

common data and first file data of the first image (Figs. 1, 4, 5; col. 5, lines 15 – 47); and

wherein the server is adapted to transmit second descriptive data to the second destination device via the shared network, said second descriptive data identifying the common data and second file data of the second image (Figs. 1, 4, 5; col. 5, lines 15 – 47).

7.4   Per claim 4, Diwan teaches the system of claim 3: wherein the first destination device receives the common data and the first file data via the shared network as defined by the first descriptive data transmitted to the first destination device from the server (Figs. 1, 4, 5; col. 5, lines 15 – 47; col. 5, line 62 – col. 6, line 5).

7.5   Regarding claim 5, Diwan discloses the system of claim 3: wherein the second destination device receives the common data and the second file data via the shared network as defined by the second descriptive data transmitted to the second destination device from the server (Figs. 1, 4, 5; col. 5, lines 15 – 47; col. 5, line 62 – col. 6, line 5).

7.6   Per claim 6, Diwan teaches the system of claim 3 wherein the server **directly** transmits the first descriptive data to the first destination device and the server **directly** transmits the second descriptive data to the second destination device, and wherein the server **multicasts the common data**, the first file data and the second file data simultaneously to the first and second destination devices (Fig. 1; col. 2, lines 8 – 15 "multicast message").

7.7 Regarding claim 7, Diwan discloses the system of claim 3 wherein the server maintains a list of destination devices and images to be transmitted to destination devices on the list and multicasts common data and file data corresponding to the images to be transmitted to destination device on the list (Fig. 1; col. 2, lines 8 – 15 "generating a multicast message containing the common information; and transmitting the multicast message to the group of subscribers.").

7.8 Per claim 8, Diwan teaches the system of claim 3 wherein the server multicasts the common data, the first file data and the second file data to the first and second destination devices including a unique identifier for the data currently being transmitted (Figs. 1, 3; col. 2, lines 8 – 15; col. 5, lines 48 – 58).

7.9 Regarding claim 9, Diwan discloses the system of claim 8 wherein the first destination device receives the common data, the first file data and the second file data and stores only the common data and first file data as indicated by the unique identifier (col. 2, lines 8 – 15; col. 5, lines 48 – 58).

7.10 Per claim 10, Diwan teaches the system of claim 7 wherein the first destination device provides a first notification to the server when the first destination device has received the common data and the file data corresponding to the first descriptive data (col. 2, lines 8 – 15; col. 5, lines 48 – 58).

7.11 Regarding claim 11, Diwan discloses the system of claim 10 wherein the server, in response to the first notification, removes the first destination device from the list and discontinues multicasting the file data of the first image, unless another destination device has requested the first image (Figs. 4, 5; col. 2, lines 8 – 15; col. 5, lines 48 – 58; col. 6, lines 16 – 25).

7.12 Per claim 12, Diwan teaches the system of claim 10 wherein the server, in response to the second notification, removes the second destination device from the list and discontinues multicasting the common data of the second image, unless another destination device has requested an image which includes the common data (Figs. 4, 5; col. 2, lines 8 – 15; col. 5, lines 48 – 58; col. 6, lines 16 – 25).

7.13 Regarding claim 13, Diwan discloses the system of claim 10 wherein the first destination device reconstructs the image corresponding to the first descriptive data (col. 6, lines 16 – 25 "discards any extraneous information").

7.14 Per claim 14, Diwan teaches the system of claim 1 wherein the server is adapted to transmit a plurality of multicast streams including common and/or descriptive data and wherein the servers selects a number of multicast streams as a function of destination device restore time and as a function of total bandwidth of the streams being transmitted (Fig. 4; col. 2, lines 8 – 15; col. 5, lines 15 – 58).

7.15   Regarding claim 15, Diwan discloses the system of claim 1 wherein the server is

configures to sequentially transmit the file data in a sequence defined by a priority (Fig.

4; col. 2, lines 8 – 15; col. 5, lines 15 – 58).

7.16   Per claim 16, Diwan teaches the system of claim 1 for transmitting a third image

including a third software, wherein the first and third images include common file data,

wherein the third image includes third file data which is different from the first file data

and which is different from the second file data, said system further comprising: a third

destination device; said shared network linking the server to the third destination device;

wherein the server is adapted to simultaneously transmit the common data to the first,

second and third destination devices via the shared network; and wherein the server is

adapted to transmit the third file data to the third destination device via the shared

network (Fig. 1, items105, 110, 115, 120, 125; col. 2, lines 8 – 15 "generating a

multicast message containing the common information; and transmitting the multicast

message to the group of subscribers."; col. 2, line 66 – col. 3, line 14 "additional

subscribers may also be included in the network 100").

7.17   Regarding claims 17 – 70, the rejection of claims 1 – 16 under 35 USC 102(e)

(paragraphs 7.1 – 7.16 above) applies fully.

8.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth R. Coulter whose telephone number is 571 272-3879. The examiner can normally be reached on M - F, 7:30 am - 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 571 272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

krc

KENNETH R. COULTER
PRIMARY EXAMINER